IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

:: JUDGMENT ::

Jalam Singh Vs. Jagir Singh & Ors.

S.B. CIVIL MISC. APPEAL NO.406/1993.

Against the award dated 05.06.1993 made by the Motor Accidents Claims Tribunal, Jodhpur in Claim Case No.129/1989.

Date of Judgment :: 3rd January 2007.

PRESENT

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. S.K. Sankhla, for the appellant.
Mr. Jagdish Vyas, for the respondent No.3

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BY THE COURT:

This is claimant's appeal seeking enhancement over the amount of compensation awarded by the Motor Accidents Claims Tribunal, Jodhpur in its award dated 05.06.1993 in Claim Case No.129/1989.

Briefly put, the facts of the case are that on 12.01.1989 at about 10:30 p.m. the claimant-appellant, on his

duty as Sub-Inspector of Police, came out of police lines, Jodhpur traveling in an official jeep bearing registration No. RRN 2499 driven by the constable Hari Singh; the jeep after coming out of police lines to the main road, proceeded towards Mohanpura Bridge, i.e. towards its right-hand side; the jeep was hit by a truck bearing registration No. MCU 4417 coming from Mohanpura Bridge. In the accident, the jeep driver Hari Singh perished whereas the appellant Jalam Singh sitting by the side of driver sustained grievous injuries.

Narrating the incident aforesaid and alleging rash and negligent driving by the truck driver, the claimant-appellant made a claim for compensation against the driver, owner, and insurer of the offending truck. For quantification of compensation, the claimant submitted that he was 53 years in age and working as Sub-Inspector of Police earning salary income of Rs.2,450/- per month apart from getting annual assistance of Rs.500/-; that in near future he would have been promoted as Circle Inspector and then as Deputy Superintendent of Police and by the time of retirement would have earned salary income of about Rs.4,000/- per month. The claimant alleged that with serious bony injuries on head he remained comatose for about two months; that he has suffered substantial loss of memory and so also disfiguration; that his head was compressed, his right eye weakened, and

other faculties of hearing, smell and taste were also retarded and he was suffering persistent headache; that he was under the threat of loosing his job; that he would have gained promotions in service and would have also taken up job as security officer after retirement and so also cultivation of his agricultural land but due to the injuries he was rendered unfit to carry any job and has lost on earning prospects; and that he was now permanently dependent on an attendant. The claimant claimed compensation for the loss suffered on treatment expenditure, transportation, attendants, income, future earning capacity, pains and sufferings and amenities of life, in all in the sum of Rs.3,80,000/-.

The truck driver non-applicant No.1 in his reply asserted that the accident occurred for jeep driver's negligence who came on the main road from the side lane without indication; and that he was wrongly implicated in the present case for the injured being the police personnel. The insurer of truck, while admitting insurance coverage of the vehicle stated general denial of claim averments, asserted that the accident occurred for the negligence of the jeep driver, and submitted that compensation, if any, ought to be recovered from the owner of the jeep, the State of Rajasthan. The insurer also maintained that the jeep owner was a necessary party to determine the amount of compensation in this case and in its

absence the claim could not be proceeded with and that the insurer would adopt Sections 95 and 96 of the Motor Vehicles Act, 1939 in its defence.

On the pleadings, the Tribunal framed the following issues for determination of the questions involved in the case:-

"(1) क्या दिनांक 12.1.89 को रात 10.30 बजे अथवा उसके लगभग जोधपुर में पुलिस लाईन के सामने आम सड़क पर अप्रार्थी सं0 1 जगीरसिंह ने ट्रक नम्बर एम.सी.यू. 4417 को तेजी, गफलत और लापरवाही से चलाकर दुर्घटना कारित की ?

(2) क्या उपरोक्त दुर्घटना में प्रार्थी जालमसिंह सब इन्सपेक्टर पुलिस लाईन्स जोधपुर , जो डी.ओ.डियूटी हेतु पुलिस की जीप में बैठकर गार्ड चैक करने के लिए पुलिस लाईन्स से रवाना हुए थे, को अप्रार्थी सं0 1 जगीरसिंह ने मोहनपुरा की तरफ से आकर जोरदार टक्कर मार दी जब कि पुलिस की जीप अपनी सही दिशा में बिल्कुल धीमी गति से सड़क के बांये किनारे चल रही थी और इस दुर्घटना से प्रार्थी जालमसिंह के सिर में भंयकर चोट आई और शरीर के अन्य भागों पर भी चोट लगी और वह दो महीने तक बेहोशी की हालत में रहा और सिर में आई गम्भीर चोटों के कारण उसकी याददाशत स्थाई रूप से अधिकांशत: खो गई और उसके सिर में हर समय स्थाई रूप से दर्द रहता है और उसकी दाहिनी ऑख भी स्थाई रूप से चोट के कारण कमजोर हो गई और सिर में गहरा घाव होने से सिर का भाग पिचक सा गया और उसके कान में भी स्थाई नि:शक्ता आ गई ?

(3) क्या प्रार्थी 3,80,000/- रूपये बतौर क्षतिपूर्ति अप्रार्थीगण से प्राप्त करने का अधिकारी है ?
(4) क्या प्रार्थी जीप नं0 आर.आर.एन. 2499 के मालिक राजस्थान सरकार से क्षतिपूर्ति प्राप्त करने का अधिकारी है ?

(5) क्या जीप मालिक राजस्थान सरकार आवश्यक पक्षकार है क्योंकि जीप चालक हरीसिंह, दुर्घटना के समय जीप नम्बर आर.आर.एन. 2499 को बहुत तेजी,

गफलत और लापरवाही से चला रहा था और इस कारण दुर्घटना घटित हुई जिससे जीप मालिक राजस्थान सरकार क्षतिपूर्ति हेतु जिम्मेवार है?

(6) अनुतोष ?"

It appears that the dependents of the other victim of the same accident, i.e. the jeep driver Hari Singh, filed another claim application against the same non-applicants on the same allegations of rash and negligent driving by the truck driver and claimed compensation for the loss suffered by them. The said claim application was registered as Claim Case No.89/1989 with the same Tribunal. In the claim case of the present appellant numbered 129/1989, after the claimant was examined in evidence as AW-1, and the matter was pending for taking further evidence on behalf of the claimant, the two claim cases were ordered to be consolidated. After taking evidence led by the respective claimants, the Tribunal proceeded to decide both the cases together by the common award dated 05.06.1993. It appears that the non-applicants choose not to lead any evidence.

Taking together issues Nos. 1 and 2 of the similar nature regarding responsibility towards the incident and the injuries suffered by the victims, the Tribunal, after consideration of the evidence available on record found that the accident occurred for 25% negligence on the part of the

jeep driver and 75% on the part of the truck driver. It was also noticed that the jeep driver Hari Singh expired due to the injuries sustained in the accident and Jalam Singh (appellant) sustained grievous and simple injuries. On other issues Nos. 4 and 5 in both the cases the Tribunal observed that the claimants have not claimed any compensation from the jeep owner and, therefore, State of Rajasthan was not a necessary party, although 25% negligence was found in the jeep driver.

For quantification of compensation in relation to the present claim case, the Tribunal noticed that the claimant had received the amount of medical bills from his employer; however, looking to the extended hospitalization of the claimant and the fact that there was blood transfusion and there were likely expenditure on diagnosis, radiography etc., the Tribunal allowed him Rs.5,000/- towards treatment expenditure. The claimant was further allowed Rs.1,000/- towards transportation with the observations that no documentary proof in that relation was produced. The Tribunal proceeded to disallow the claim towards loss of income with reference to the certificate Ex.12 showing commuted leave of 246 days having been sanctioned. On the score of loss of earning, the Tribunal referred to the order Ex.9 dated 24.10.1989 placed on record by the claimant showing that he had taken voluntary retirement for family circumstances and

under the said order, the claimant stood retired w.e.f. 31.12.1989. According to the Tribunal, it could not be concluded that the claimant opted for retirement only due to the injuries. The Tribunal also referred to the testimony of PW-4 Dr. Sukhdev Chand to the effect that there had been gradual recoupment of memory and further observed that it was not established that the claimant was got examined by a psychiatrist. With these observations and on these considerations, the Tribunal allowed only Rs.20,000/- to the claimant towards financial loss. The Tribunal further allowed Rs.25,000/- towards pains and sufferings and loss of amenities of life.

In the manner aforesaid the Tribunal assessed loss for the claimant-appellant at Rs.51,000/- and proceeded to deduct 25% whereof with reference to the contributory negligence of the jeep driver; and found the claimant entitled for compensation in the sum of Rs.38,250/-. With further observations that the claimant has taken longer time in adducing evidence that led to delay in disposal of the case the Tribunal considered it appropriate to allow interest to the claimant in lump sum of Rs.2,000/- till the date of award and allowed future interest @ 12% per annum.

Assailing the award aforesaid, learned counsel for the claimant has contended that the Tribunal has erred in not

awarding adequate compensation towards pecuniary and non-pecuniary losses in this case and has also erred in reducing 25% of the assessed loss in the name of contributory negligence of the jeep driver. Learned counsel urged that in the first place there was no negligence on the part of the jeep driver and in the alternative, even if there be some such negligence on the part of the jeep driver, qua the appellant who was an occupant of the jeep, the case remains that of composite negligence of the two drivers and no part of the amount of compensation could have been reduced as the claimant is entitled to recover compensation from all or any of the several tortfeasors. Learned counsel also submitted that the Tribunal has erred in denying reasonable pendente lite interest to the claimant. On the other hand, learned counsel for the insurer has duly supported the award impugned and submitted that the ultimate amount of compensation and interest allowed by the Tribunal does not fall short of just compensation admissible in the case and the award in question calls for no interference.

Having given a thoughtful consideration to the submissions and having examined the material as available on the record of the case, this Court is clearly of opinion that the award of compensation made by the Tribunal in the present case suffers from fundamental errors in application of legal

principles and falls much short of just compensation and deserves modification.

The assessment by the Tribunal of the amount of loss for claimant has been too restrictive and rather unrealistic. It is noticed from the injury report (Ex.8) and the X-ray report (Ex.7) available on record that the claimant had suffered extensive injuries; and apart from abrasions on right cheek and left leg, he suffered two grievous injuries on forehead and temporal region with fracture and compression of skull bones. The X-ray skull taken on 01.03.1989 has shown,-

> "There is radioluscent area (bone gap) in Rt. Temporoparietal region and one radioluscent area in Rt. Parietal region."

Discharge ticket (Ex.11) shows the claimant having suffered depressed fracture at frontal and temporal region. The details of bed head ticket (Ex.13) make it clear that the claimant remained comatose with pupil dilated and not reacting for a long time and operation was performed on the fractured skull bones. The claimant has filed the claim application on 03.07.1989; has remained under treatment till 15.09.1989 and has applied for voluntary retirement on 28.09.1989 that has been acceded by the order dated 24.10.1989. Dr. S.C.Lodha, Associate Professor of Mahatma Gandhi Hospital, Jodhpur has certified (vide Ex. 10) that the claimant has sustained head injury with depressed fracture

(right front parietal region with extradural haematoma) and the injury has resulted in disfiguration of head and lack of memory extending to 50% as on the date of certificate, i.e. 12.12.1989. 246 days commuted leave of treatment period was sanctioned under the order dated 14.12.1990 (Ex.12) from 13.01.1989 to 15.09.1989.

In the present case, the Tribunal has of course rightly allowed Rs.5,000/- towards treatment expenditure over and above the bills drawn from the employer but then has failed to provide for any amount towards dietary expenditure, attendants and even the amount allowed towards transportation at Rs.1000/- appears inadequate. Then, the approach of the Tribunal in denying compensation towards financial loss to the claimant does not appear correct.

On the facts and in the circumstances of this case, where the claimant has immediately after the treatment period applied for and obtained voluntary retirement and has not shown any loss otherwise having been caused to him in his salary or retrial benefits, no component of loss is allowed on the count of sanction of leave for 246 days; but the fact remains that the claimant quit the job only under the force of circumstances particularly of his physical and mental condition after the incident. With the nature of injuries suffered by him

and where he remained regularly under treatment from 13.01.1989 to 15.09.1989, even if he mentioned “Family Circumstance” as the cause for seeking voluntary retirement, it is but apparent that such option had to be exercised by the claimant who was at that time under the trauma of loss of memory to the extent of 50%; and he could not have risked his and other person’s lives by continuing in his job as a Sub-Inspector of Police. The Tribunal has chosen to refer only to the phrase “Family Circumstances” in the order permitting voluntary retirement without correlating the same with the circumstances directly available on record. Though the statements of PW-4 Dr. Sukhdev Chand are not available on the record of the present claim case, but assuming that he had stated likelihood of gradual recoupment of memory with the passage of time, that by itself cannot be taken sufficient to conclude that at the relevant time in the month of September 1989 the claimant quit the job for the reasons other than the after-effects of the injury.

Then, the Tribunal has totally omitted to consider the statements of the claimant that he was rendered unfit to take up any other job and has lost the prospects of future earnings too. In the overall circumstances of the case, the claimant deserves to be allowed reasonable compensation for the loss of earnings and loss of earning capacity.

Having regard to the circumstances of the case, this Court is of opinion that just compensation payable to the claimant could be assessed thus: The claimant deserves to be allowed Rs.5,000/- towards treatment and related expenditure as allowed by the Tribunal. The claimant further deserves to be allowed Rs.5,000/- towards special diets; Rs.2,000/- towards transportation and Rs.5,000/- towards attendants. Yet further, the claimant deserves to be allowed Rs. 10,000/- towards two grievous injuries and another Rs. 2,000/- for two simple injuries. The claimant was earning salary income of Rs.2,450/- per month at the time of accident and was 53 years in age. In the overall circumstances of the case, this Court is of opinion that the claimant was definitely capable of earning minimum of Rs. 29,400/- per annum and with reference to 50% loss of memory and other retardation even if it be assumed that the earning capacity has been reduced to half and even if a lower side multiplier of 8 is applied, loss of income stands minimum at Rs.1,17,600/- (29,400/2 x 8) and there appears no reason to disallow compensation for such loss suffered by the claimant. Non-pecuniary loss allowed by the Tribunal in the sum of Rs.25,000/- deserves to be retained towards loss of amenities of life with reference to the nature of injuries and disfiguration suffered by him.

The claimant is, therefore, entitled for compensation minimum in the sum of Rs.1,71,600/- (5,000/- + 5,000/- + 5,000/- + 2,000/- + 12,000/- 1,17,600/- + 25,000/-) and the Tribunal cannot be said to have awarded just compensation by assessing the loss at a meager Rs.51,000/-.

The Tribunal has committed yet another error in proceeding to reduce the amount of compensation for the claimant-appellant with reference to the so-called negligence of the jeep driver. The Tribunal has omitted to considered that even if there be a finding on 25% negligence of the jeep driver, so far the present claimant, an occupant of jeep, is concerned, qua him the case remains that of composite negligence of the two drivers and it was permissible for the claimant to seek compensation from all or any of the several tortfeasors. Proposition of reduction of 25% amount of assessed loss in this case cannot be approved.

The Tribunal has further erred in disallowing reasonable pendente lite interest to the claimant with the observation that the claimant has taken longer time in leading evidence. The observations are not correct and the claimant could not have been denied interest of the period of pendency of claim application. A look at the record shows that issues were framed in this case on 16.04.1990; then the matter was adjourned on 19.04.1990 in Lok Adalat for the discussions (for

settlement) remaining incomplete. On 23.05.1990, the lawyers were on strike. On 23.07.1990, the learned presiding officer was under transfer and on 15.09.1990, the presiding officer had not been posted. Of course, the claimant took two adjournments on 03.11.1990 and 14.12.1990 but then the evidence was available on 18.12.1990 but not recorded for the counsel for the non-applicant being busy in other court. On 19.12.1990 PW-1 Jalam Singh was examined. Then adjournments were sought on 11.03.1991 and 07.05.1991; and on 22.07.1991, the case was adjourned for the learned presiding officer being on leave. In between, the matter was placed in Lok Adalat in 21.03.1991 and 24.06.1991. Despite the talks of compromise having failed on 24.06.1991 the matter was repeatedly placed in Lok Adalat on 27.08.1991, again on 24.09.1991 and yet again on 26.09.1991. Then adjournments were taken on 18.11.1991, 20.01.1992 and 27.04.1992 and then the case was consolidated with aforesaid Claim Case No.89/1989 and both the matters were decided together on 05.06.1993. In this state of affairs, it does not sound justified to penalize the claimant for the pendency of the claim application when the matter has been adjourned for more than one reason on different occasions. This Court in the case of Rajiv Vs. Sumer Singh & Ors: CMA No. 833/2006 decided on 18th December 2006 has pointed out,-

> "Ordinarily, in a vehicular accident claim case, the claimant is entitled for interest on the award amount from the date of filing of the claim application as envisaged by Section 171 of the Motor Vehicles Act and such component of interest should not be denied unless the claimant could be said to have intentionally delayed the disposal of the claim application."

and that,-

> "The provisions of Section 171 of the Motor Vehicles Act, 1988 have specifically been enacted so as to empower the Claims Tribunal to order awarding of simple interest at the reasonable rate from a date not earlier than the date of making the claim and this Court is of opinion that it shall be a travesty of justice if the provisions so contained in the beneficial legislation be not given their true meaning and effect; and if award of interest be curtailed with mere counting of months and days while ignoring the ground realities."

In the aforesaid case of Rajiv, this Court has disapproved the proposition of depriving the claimant of interest during the entire period of pendency of the claim application in the name of so called delay in leading evidence by an injured claimant who was regularly undergoing treatment for the unabated after-effects of the injuries sustained in vehicular accident. In the present case too, the claimant with kind of injury suffered has pointed out in his statement before the Tribunal that he was required to remain dependent on an attendant. The claimant has yet prosecuted his claim case by production of relevant documentary and oral evidence. It is of course true that some adjournments were taken by the

claimant for leading evidence, but then the period between framing of issues till the decision has also seen the hearing dates being adjourned for the presiding officer being not available, for the counsel for the non-applicant being busy elsewhere and for repeated placing of the matter in Lok Adalat. In this state of affairs, the discretion exercised by the Tribunal in denying interest to the claimant for the entire period of pendency of the claim application cannot be said to a valid and proper exercise of judicial discretion.

At the relevant time, interest could have been awarded at the then prevalent rates of about 12% per annum and the Tribunal has itself awarded such rate of interest from the date of award. Having regard to the circumstances of the case and enhancement of the amount of compensation being made herein, this Court is of opinion that interest of justice shall be served if the claimant is allowed interest on the award amount @ 7.5% per annum from the date of filing of the claim application till the date of payment.

As a result of the aforesaid, this appeal succeeds and is allowed to the extent indicated above; the award made by the Tribunal is modified and instead of the amount awarded by the Tribunal, the claimant is allowed compensation in the sum of Rs. 1,71,600/- together with interest @ 7.5% per annum from the date of filing of the claim application.

Remaining amount payable under the modified award after adjusting the amount already paid shall be deposited by the respondent-insurer within 30 days from today with the Tribunal. Having regard to the circumstances of the case where the claimant was about 53 years in age at the time of accident in the year 1989, 75% of the amount being now deposited be disbursed in cash to the claimant and 25% be placed in an appropriate Income Scheme of Post Office for a minimum period of three years. There shall be no order as to costs of this appeal.

(DINESH MAHESHWARI),J.

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